



Order 99-7-12

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 22nd day of July, 1999

Served: July 26, 1999

Applications of

HEAVYLIFT-VOLGADNEPR LTD.

ANTONOV DESIGN BUREAU

for exemptions under 49 U.S.C. section 40109(g)

Dockets **OST-98-3544** **OST-99-5634**
OST-98-3992 **OST-99-5711**
OST-99-5617

OST-98-3978
OST-98-4772

ORDER CONFIRMING EXEMPTIONS

Summary

This order confirms our oral actions granting the applications of the above-referenced foreign air carriers for exemption authority pursuant to 49 U.S.C. section 40109(g) to operate cargo charter flights carrying emergency cabotage traffic consisting of outsized satellites and related equipment.

Applications

By applications filed during the period February 23, 1998 - May 20, 1999, as shown in the attached Notices of Action Taken, Heavylift-VolgaDnepr and Antonov Design Bureau requested exemption authority pursuant to 49 U.S.C. section 40109(g) to operate cargo charter flights carrying emergency cabotage traffic consisting of outsized satellites and related equipment, on behalf of Lockheed Martin, Hughes Space and Communications, and Space Systems Loral, Inc. The applicants stated that production of the satellites was behind schedule due to unexpected

manufacturing and testing difficulties, that delivery by air was necessary in order to prevent postponement of scheduled launch dates and undue hardship to the shippers, and that because of the size of the satellites transportation on U.S.-carrier aircraft was not possible. They also attached to their applications statements from the shippers confirming their characterizations of the situations and supporting their requests.

Answers

Each applicant served its application on those U.S. carriers operating large all-cargo aircraft. Each U.S. carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority.

Statutory Standards

Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (*i.e.*, cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, was not relevant here).¹

Disposition

As shown in the attached Notices of Action Taken, we orally granted the requests of Heavylift-VolgaDnepr and Antonov for exemption authority to conduct their proposed emergency cabotage flights. We confirm our actions here. We found that each application met all of the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that grant of this authority was required in the public interest.²

We were persuaded that the unforeseen technical and production problems encountered by Lockheed, Hughes and Space Systems Loral during the manufacture and testing of the satellites; the need to move the satellites promptly in order to meet production, delivery and launch deadlines; the fact that the satellites could not be transported by surface in time to meet those deadlines; and the potential negative impact of further delays, constituted an emergency not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of the applicants' requests would prevent undue hardship to Hughes, Lockheed, and Space Systems Loral.

¹ For examples of earlier grants of authority of this type, *see* Orders 98-1-14 and 97-9-10.

² We further found the applicants qualified to perform the operations at issue here (*see, e.g.*, Orders 93-10-19 and 98-2-7).

In view of the above, we found that immediate action on these applications was required; that our actions met the relevant criteria of 49 U.S.C. 40109(g) and were required in the public interest; and that our actions did not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken which granted Heavylift-VolgaDnepr Ltd. and Antonov Design Bureau exemption authority pursuant to 49 U.S.C. section 40109(g) to perform their proposed emergency cabotage flights;
2. In the conduct of the authorized operations, we required Heavylift-VolgaDnepr and Antonov to comply with the conditions of Attachment A and FAA-approved flight routings; and
3. We will serve this order on Heavylift-VolgaDnepr Ltd., Antonov Design Bureau, the Department of State (Office of Aviation), and the Federal Aviation Administration (AFS-200).

By:

A. BRADLEY MIMS

Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-98-3544

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: February 23, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way cargo charter flight between Philadelphia, Pa, and Moffett Field, CA, on or about February 28, 1998, using its AN-124 aircraft, to transport one outsized satellite and related equipment on behalf of Lockheed Martin Missiles & Space. The applicant stated that Lockheed was under contract to manufacture a Telesat satellite which was scheduled for shipment from Moffett Field to Russia on May 28 in preparation for a July 1 launch. It stated that the satellite is the first payload scheduled for completion at Lockheed's new Pennsylvania plant, that production was behind schedule primarily due to unexpected difficulties in the new plant, and that Lockheed planned to complete certain work on the satellite at its California plant before shipment to Russia. It stated that in order to complete production and to meet scheduled shipment and launch dates, the satellite had to be transported by air.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: February 26, 1998

Effective dates of authority granted: February 28 - March 3, 1998

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Lockheed Martin.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
Transportation**
Office of the Secretary
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NOTICE OF ACTION TAKEN

DOCKET OST-98-3992

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: June 26, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way cargo charter flight between San Bernardino, CA, and Cape Canaveral, FL, on or about June 30-July 1, 1998, using its AN-124 aircraft, to transport two outsized containerized satellites on behalf of Hughes Space and Communications Company. The applicant stated that Hughes was under contract to manufacture one satellite scheduled to be mated by July 14 on an Atlas booster produced by Lockheed, and another to be mated by July 21 with a Delta booster produced by The Boeing Company. It also stated that major, unanticipated delays have occurred in the manufacturing and test phases of both spacecraft, and that in order to eliminate additional delays and to meet scheduled mating and launch dates, Hughes urgently required delivery of the satellites by air.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: June 29, 1998

Effective dates of authority granted: June 30 - July 3, 1998

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Hughes.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



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NOTICE OF ACTION TAKEN

DOCKET OST-99-5617

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Heavylift-VolgaDnepr Ltd.**

Date Filed: May 3, 1999

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way cargo charter flight between Philadelphia, Pa, and Moffett Field, CA, on or about May 7, 1999, using its AN-124 aircraft, to transport one outsized satellite and related equipment on behalf of Lockheed Martin Astro Space. The applicant stated that Lockheed was under contract to manufacture a GE-4 commercial communication satellite payload which was scheduled for shipment from Moffett Field to Kazakhstan on September 28, in order to prepare for a October 28 launch. It stated that the satellite was in production at Lockheed's Pennsylvania plant and that certain work had to be completed at its California plant before shipment to Kazakhstan. It stated that in order to complete production and to meet the scheduled launch date, the unfinished satellite had to be transported to the California plant by air.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: May 5, 1999

Effective dates of authority granted: May 7-10, 1999

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Lockheed.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: **A. BRADLEY MIMS**
Acting Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-99-5634

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: May 5, 1999

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way cargo charter flight between Moffett Field, CA, and Cape Canaveral, FL, on or about May 11, 1999, using its AN-124 aircraft, to transport one outsized satellite and related equipment on behalf of Space Systems Loral, Inc. The applicant stated that the charterer had experienced unexpected production delays in completing the satellite, that surface transportation was not feasible because of the time involved and the adverse effect a long road trip would have on the the satellite, and that air transportation was urgently required to meet scheduled launch deadlines.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: May 7, 1999

Effective dates of authority granted: May 11 - 14, 1999

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to the cargo and Space Systems Loral.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs



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NOTICE OF ACTION TAKEN

DOCKET OST-99-5711

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Heavylift-VolgaDnepr Ltd.**

Date Filed: May 20, 1999

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way cargo charter flight between Moffett Field, CA, and Cape Canaveral, FL, on or about June 4, 1999, using its AN-124 aircraft, to transport one outsized satellite and related equipment on behalf of Space Systems Loral, Inc. The applicant stated that the flight, originally scheduled for May 11, had to be postponed because of a computer problem with the rocket intended to launch the satellite from Cape Canaveral, that surface transportation was not feasible because of the time involved and the adverse effect a long road trip would have on the the satellite, that air transportation was urgently required to meet scheduled launch deadlines, and that because of the size of the satellite transportation on U.S.-carrier aircraft was not possible.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: June 2, 1999

Effective dates of authority granted: June 4 - 8, 1999

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to the cargo and Space Systems Loral.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: **A. BRADLEY MIMS**
Acting Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-98-3978

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Antonov Design Bureau

Date Filed: June 23, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to operate one one-way cargo charter flight from Philadelphia, PA, to Moffett Field, CA, during the period June 28-July 3, 1998, using its AN-124 aircraft, to transport one outsized telecommunications satellite and related equipment on behalf of Lockheed Martin Missiles & Space. The applicant stated that Lockheed was under contract to manufacture a communications satellite which was scheduled for shipment from Moffett Field to South America on October 29 in preparation for a November 30 launch. It also stated that production was behind schedule because of serious, unforeseen manufacturing problems, and that Lockheed planned to complete certain work on the satellite at its California plant before shipment to South America. It further stated that in order to complete production and to meet the scheduled shipment and launch dates, the satellite had to be transported by air to the California plant.

Applicant representative: Sheryl Israel 202-663-8312

Responsive pleadings: Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority.

DISPOSITION

Action: Approved

Action date: June 25, 1998

Effective dates of authority granted: June 28 - July 3, 1998

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Antonov's request would prevent undue hardship to Lockheed Martin.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions, and to the condition that Antonov comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-98-4772

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Antonov Design Bureau

Date Filed: November 17, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to operate one one-way cargo charter flight from Philadelphia, PA, to Moffett Field, CA, during the period November 22-30, 1998, using its AN-124 aircraft, to transport one outsized telecommunications satellite and related equipment on behalf of Lockheed Martin Missiles & Space. Antonov stated that the satellite was in production at Lockheed Martin's New Jersey plant, that production was behind schedule because of unexpected production problems, and that Lockheed Martin planned to complete certain work on the satellite at its California plant before shipping the completed satellite to Kazakhstan. It stated that in order to complete production and to meet the scheduled launch date, the unfinished satellite had to be transported to the California plant by air.

Applicant representative: Sheryl Israel 202-663-8312

Responsive pleadings: Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority.

DISPOSITION

Action: Approved

Action date: November 19, 1998

Effective dates of authority granted: November 22 - 30, 1998

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Antonov's request would prevent undue hardship to Lockheed Martin.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions, and to the condition that Antonov comply with an FAA-approved flight routing for the authorized flight

Action taken by: CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs